C.A. Nos.724, 725, 771, 774 & 823/98:-

CA.724,725/98:= The Accused Nos.1 & 3 Viz J. George and N. Latha were directed to be released on bail by the order of this Court dated 15.9.1998 made in Crl.MP.Nos.6969/98 in CA.724/98 & Crl.MP.No.6971/98 in CA.725/98.

CA.771/98:- The Accused No.2 Viz K.B.Bhojan, was directed to be released on bail by the order of this Court dated 24.9.1998 and made in Crl.MP.Nos.7421/98 in CA.771/98.

CA.774/98:- The Accused Viz R. Devarajan, was directed to be released on bail by the order of this court dated 23.9.98 and made in Crl.MP.No.7449/98 in CA.774/98.

CA.No.823/98:- The Accused Viz M. Raju, was directed to be released on bail by the order of this Court dated 15.10.98 and made in Crl.MP.No.8032/98 in CA.No.823/98.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2006

CORAM

THE HONOURABLE MR. JUSTICE K.N.BASHA

Criminal Appeal Nos.724, 725, 771, 774 and 823 of 1998

Criminal Appeal Nos.724, 771 and 774 of 1998

1.J.George
2.N.Latha .. Appellants/Accused 1 & 3 in Crl.A.No.724/1998

3.K.B.Bhojan .. Appellant/Accused 2 in Crl.A.No.771/1998

4.R.Devarajan .. Appellant/Accused 4 in Crl.A.No.774/1998

Vs.

State rep. by
The Superintendent of Police,
CBI, Madras .. Respondent in CA.Nos.724/98 and 771/98

State rep by Inspector of Special Police Establishment,
Central Bureau of Investigation,
Anti Corruption Bureaue,
Chennai .. Respondent in CA.No.774/98

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Criminal Appeal Nos.725 and 823 of 1998

J.George .. Appellant/Accused 1 in
Crl.A.No.725/1998

M.Raju .. Appellant/Accused 2 in
Crl.A.No.823/1998

Vs.

State rep. by
The Superintendent of Police,
CBI, Madras .. Respondent/Complainant in both the Appeals

* * *

Criminal Appeal Nos.724, 771 & 774 of 1998 filed against the Judgment dated 31.08.1998 passed in C.C.No.13 of 1998 on the file of the learned III Additional Sessions Judge cum Special Judge for C.B.I. Cases, Coimbatore.

Criminal Appeal Nos.725 and 823 of 1998 filed against the Judgment dated 31.08.1998 passed in C.C.No.14 of 1998 on the file of the learned III Additional Sessions Judge cum Special Judge for C.B.I. Cases, Coimbatore.

* * *

For Appellants in Crl.A.Nos.724, 725 & 771 of 1998 : Mr.V.Gopinath, Senior Counsel for Mr.L.Mahendran

For Appellant in Crl.A.No.823 of 1998 : Mr.S.R.Sundaram

For Appellant in Crl.A.No.774 of 1998 : Mr.S.Suresh

For Respondent in all Criminal Appeals : Mr.N.Chandrasekaran, Spl. Public Prosecutor for C.B.I.Cases in all the Appeals

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C O M M O N J U D G M E N T

A-1, who is the appellant in Crl.A.Nos.724 and 725 of 1998, A-2, who is the appellant in Crl.A.No.771 of 1998, A-2, who is the appellant in Crl.A.No.823 of 1998, A-3, who is the appellant in Crl.A.No.724 of 1998 and A-4, who is the appellant in Crl.A.No.774 of 1998, have come forward with these appeals challenging their conviction and sentence passed by the learned III Additional District Judge/Special Judge for C.B.I.Cases, Coimbatore, in C.C.Nos.13 and 14 of 1998 convicting A-1, in Crl.A.Nos.724 and 725 of 1998, under Section 120-B r/w 420 IPC and under Section 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947 (for short "the Act") and under Section 5(2) r/w 5(1)(d) of the Act in each case and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo three months imprisonment for each offence in each case, convicting A-2, in Crl.A.No.771 of 1998, under Section 120-B r/w 420 IPC and under Section 5(2) r/w 5(1)(d) of the Act and under Section 109 IPC r/w Section 5(2) r/w 5(1)(d) of the Act and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo three months imprisonment for each offence, convicting A-2, in Crl.A.No.823 of 1998, under Section 420 IPC and under Section 109 IPC and 5 (2)r/w 5(1)(d) of the Act and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo three months imprisonment for each offence, convicting A-3 and A-4, in Crl.A.Nos.724 and 774 of 1998 respectively, under Section 120-B r/w 420 IPC and under Section 5(2) r/w 5(1)(d) of the Act and under Section 420 IPC and under Section 109 IPC and 5 (2)r/w 5(1)(d) of the Act and sentencing each one of them to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo three months imprisonment for each offence.

2. The case of the prosecution is that A-1 was working as a Manager, State Bank of Travancore, Ooty Branch, from 26.07.1985 to 09.05.1986. A-2 in Crl.A.No.771 of 1998, was one of the account holders in the same branch and he used to visit the branch frequently and therefore he is having acquaintance with A-1. A-3 and A-4 are loanees.

3. (a) The sum and substance of the prosecution case in Crl.A.Nos.724, 771 and 774 of 1998 is that A-1 to A-4 during the period between February 1985 and March 1986 at Ooty and other places conspired and A-3 and A-4 knowing fully well that both of them are not eligible for getting any loan under "Self-Employment to Educated Unemployed Youth Scheme" by fraudulently and dishonestly submitted false declaration and information to the State Bank of Travancore and A-1 knowing fully well that A-3 and A-4 are not eligible for the said loan under the above said scheme fraudulently and dishonestly in pursuance of the conspiracy, by misusing or abusing his official position as Manager of State Bank of Travancore, Ooty, sanctioned a sum of Rs.20,000/- and Rs.25,000/- in favour of A-3 and A-4 respectively for the purpose of setting up a

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knitting centre and cloth shop. It is also further alleged that A-1 was well aware that the said loan amounts will not be used by them for the purpose for which the loans are sanctioned.

(b) The entire alleged fraudulent transaction for obtaining loan arising out of the Scheme called the "Self-Employment to Educated Unemployed Youth Scheme". P.W.4, who was the Field Officer during the period from 1989 to 1992 in the State Bank of Travancore, has stated about the salient features of the above said scheme. According to him, the age of the applicants should be between 18 and 35 years and minimum educational qualification is S.S.L.C. The total annual income of the family of the loanee should not exceed to a sum of Rs.10,000/-. The District Industries Centre (hereinafter referred to as "DIC") is the model agency for identification of the beneficiaries and the Manager of the District Industrial Centre has to verify and scrutinize the applications and therefore the applicant should forward the application through DIC. After scrutinizing the loan application DIC will inform the concerned Bank Manager and the Bank Manager, in turn, should conduct a pre-sanction inspection under the scheme. The Manager can grant loan to the extent of Rs.35,000/-. It is also stipulated under the scheme that the applicant should obtain a quotation and submit it along with his application in respect of the supply of required machineries and the payment would be made directly to the supplier concerned in respect of this loan. The applicant is entitled for the Government subsidy of 25% of the loan amount which will be held by way of term deposit by the Bank for repayment. It is also stipulated under the scheme that in the case of loanee failing to start the activity or diverting funds or abandoning the project, the amount of subsidy would be returned to the Reserve Bank of India and the borrower will be liable to repay the entire amount.

(c) P.W.2, the cashier of the State Bank of Travancore, has stated that under the above said scheme, A-3 has given the application under Ex.P.4. The family income in respect of the A-3 is marked as Ex.P.5. The true certified copy of the first page of S.S.L.C. and mark sheet in respect of A-3 is marked as Exs.P.6 and P.7. Proforma invoice of Variety Hall Agencies, Coonoor, for purchasing a knitting machine for A-3 is marked as Ex.P.8. The DIC recommended for financial assistance under the above said scheme to A-3 by letter dated 18.03.1986 which is marked as Ex.P.9. The copy of the sanction order of loan by the Bank dated 26.03.1986 in favour of A-3 is marked as Ex.P.10. The letter of A-3 dated 26.03.1986 to Bank agreeing to forgo the benefits of or non-availability of the concessionary rate of interest and benefit of capital subsidy in the event of A-3 misusing the sanctioned loan under the "Self-Employment to Educated Unemployed Youth Scheme" for Rs.20,000/- is marked as Ex.P.11. In both Exs.P.10 and P.11, A-1 as the Branch Manager of the Bank, initialled. Letter of undertaking of A-3 is marked as Ex.P.12. P.W.2 also further deposed that A-3 agreed to discharge the loan within 40 consecutive monthly instalments under Ex.P.12. Loan Agreement dated 26.03.1986 in respect of A-3 is marked as Ex.P.13. Pay-in-slip and Pay Order for Rs.20,000/- are marked as Exs.P.14 and P.15 and the Form for Advances Against Stocks

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is marked as Ex.P.16. Term Deposit Receipt is marked as Ex.P.17. Draft Revival Letter by A-3 is marked as Ex.P.18. Bank Pass Book of A-3 is marked as Ex.P.19.

(d) P.W.2 also stated that the loan application of A-4 is marked as Ex.P.20. The agreement for loan for a sum Rs.25,000/- is marked as Ex.P.21. Debit Voucher for Rs.25,000/- in respect of A-4 is marked as Ex.P.22. Three letters said to have been written by A-1 to one Ramaiah, father of A-4, is marked as Exs.P.23 to P.25. P.W.2 also stated about the credit voucher dated 19.02.1986 in respect of A-2, who was also holding an account in the very same branch of the bank and the same is marked as Ex.P.26. Two self-cheques for Rs.3,000/- and for Rs.7,000/- as drawn by A-2 from his savings account are marked as Exs.P.27 and P.28 respectively. These cheques were encashed by a third party as per the version of P.W.2.

(e) P.W.3, a clerk of the Branch of the State Bank of Travancore, deposed that A-1 had signed in Exs.P.6, P.23 to P.25, the letters said to have been written by A-1 to one Ramaiah, father of A-4, and Ex.P.4 is also written by A-1. P.W.3 further stated that A-1 put his signature in Ex.P.26 and signed in Exs.P.10, P.11 and P.18. P.W.3 claimed that he knows the signature of A-1.

(f) P.W.4, the Field Officer, as already stated, examined to speak about the salient features of the scheme viz., "Self-Employment to Educated Unemployed Youth Scheme".

(g) P.W.5, Executive Officer of Ketty Panchayat, stated that no licence was issued to A-4 to establish a cloth shop or any other business at Ellanhalli Village within the jurisdiction of Ketti Panchayat. Only on 31.03.1987, a licence was issued to A-4 for conducting cloth shop for the year 1987-1988 and the Licence Number is 128/87. It is also stated by P.W.5 that A-4 never run any cloth shop business during the year 1987-88.

(h) P.W.6, Postman of Needle Industries Post Office, stated that the father of A-4 was the President of the Panchayat and A-4 at no point of time established any cloth shop business at the Village.

(i) P.W.7, the clerk of Indian Railways, deposed that on 06.10.1989 he accompanied the CBI Officer, P.W.10, while P.W.10 conducted the search at A-1's house. It is also stated by P.W.7 that certain records (letters) were seized by P.W.10 under Ex.P.29. According to him, 6 letters covered under Exs.P.30 to P.35 recovered from A-1.

(j) P.W.8, the General Manager of District Industries Centre, Ooty, stated to the effect that any loan application moved before his office would be forwarded to the Committee of his office formed in this regard. He has also stated that the loan application of A-3 under Ex.P.4 and the loan application of A-4 under Ex.P.20 were forwarded through his office to State Bank of Travancore.

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(k) P.W.9 claimed that A-2 is his friend. P.W.9 has not supported the case of the prosecution and he has been treated as hostile.

(l) P.W.10, Investigating Officer, on information and upon the order of Superintendent, CBI, registered FIR under Ex.P.40 and he sent the same to the Special Court, Coimbatore. He has also conducted search in the house of A-1, on the basis of the application under Ex.P.41 before the Chief Metropolitan Magistrate, Madras, and obtained the search warrant under Ex.P.42. He has also obtained such search warrant in respect of the search in the house of the husband of A-3. On 06.10.1989, he searched the house of A-1 and secured documents under Ex.P.29 in the presence of P.W.7. Exs.P.32 to 35 were seized and secured from the house of A-1. Mr.John, Inspector, CBI, had conducted the search process in the house of the husband of A-3 and secured certain documents under Ex.P.43. P.W.10 also examined the witnesses and recorded their statements under 161 (3) of Cr.P.C. He also obtained specimen signature of A-1 and secured other documents in which the signature of A-1 is found and sent the same to Forensic Sciences Department at Chennai in order to obtain the opinion of handwriting expert.

(m) P.W.1, Chief General Manager of State Bank of Travancore, on the basis of the materials produced before him and further perusing and verifying the records and after applying his mind accorded sanction under the Sanction Order, Ex.P.3. Ex.P.1 is the xerox copy of the Resolution passed in the Board Meeting regarding the delegation of financial and administrative powers to the Chief General Manager. The Administrative Order is marked as Ex.P.2 regarding the communication sent about the delegation of financial and administrative powers consequent to the appointment of the Chief General Manager. Ex.P.1 was circulated to all the Branches of the Bank.

(n) P.W.10, after obtaining the Sanction Order, Ex.P.3 from P.W.1, filed the charge sheet against all the four accused under Section 120-B r/w 420 IPC and under Section 5(1) r/w 5(1)(d) of Prevention of Corruption Act, 1947.

4. The sum and substance of the prosecution case in respect of Crl.A.Nos.725 and 823 of 1998 is as follows :

(a) A-1 and A-2 during the period January and March 1985 at Ooty and other places agreed to do or caused to be done an illegal act and in pursuance of the conspiracy, A-2 knowing fully well that he is not eligible for getting any loan under the "Self-Employment to Educated Unemployed Youth Scheme" by fraudulently and dishonestly submitting false declaration and information to the State Bank of Travancore and in pursuance of the conspiracy, A-1, knowing fully well that A-2 is not eligible for the said loan under the above said scheme, by abusing his official position as Manager, State Bank of Travancore, Ooty, sanctioned a sum of Rs.25,000/- in favour of A-2 for the purpose of starting a coffee grinding business.

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(b) In these two appeals, the prosecution, in order to bring home the charges against the accused, examined P.Ws.1 to 8. Among the witnesses, P.W.1 is the witness who has accorded sanction to prosecute A-1, who is the Branch Manager of the Bank. P.W.2, the Cashier of the Bank, stated about A-2 applying for loan under the scheme "Self-Employment to Educated Unemployed Youth Scheme". Ex.P.4 is the loan application given by A-2. Ex.P.5 is the Affidavit filed by A-2. After scrutinising the application, Ex.P.4, of A-2/the loanee, DIC forwarded it to the Bank for sanctioning the loan. P.W.2 also stated that thereafter considering the application and other connected documents A-1 sanctioned loan for a sum of Rs.25,000/- under Ex.P.8 on 29.03.1985 with certain terms and conditions which was also signed by A-2. A-2 also submitted a quotation from the business concern of P.W.5 for purchasing coffee grinder machine. The quotation is marked as Ex.P.9. It is also specifically stated by P.W.2 that an amount of Rs.23,750/- was paid directly to P.W.5 through Pay Order under Ex.P.10. It is also stated by P.W.2 that P.W.5 also gave a receipt to the amount paid under Ex.P.11. A-2 also consented for repaying the loan amount in instalments under Ex.P.12, Composite Term Loan Agreement. The very same witness, P.W.2 was also examined in the earlier cases, as stated above, in order to speak about the submission of application and consideration and granting sanction of loan to the loanees. P.W.3, the Field Officer, who is also examined as a witness in the earlier case, as stated above, as P.W.4 stated and narrated the salient features of the scheme viz., "Self-Employment to Educated Unemployed Youth Scheme" and for according sanction of loans.

(c) P.W.4 is the General Manager, DIC who has spoken about the receipt of the application, Ex.P.4, from A-2 for sanction of loan. He has stated that another officer by name Mr.Bellie has scrutinised the application and thereafter forwarded the same to the bank with a covering letter, Ex.P.7. P.W.5 has spoken about giving quotation Ex.P.9 for the purchase of Coffee Grinder Machine. He has also stated that A-2 gave a cheque for a sum of Rs.23,750/- dated 29.03.1985 under Ex.P.10 and he has also given the acknowledgment, Ex.P.11, for the receipt of the cheque. P.W.6 is the Assistant Commercial Tax Officer who has been examined to state that A-2 has not registered any business and he had issued a certificate, Ex.P.16. P.W.7 is the Assistant Executive Engineer, Tamil Nadu Electricity Board and he has stated that the verification of records showed that A-2 was not given any electricity connection for the purpose of installing Coffee grinding machine in his shop. P.W.8, the Inspector of Police, C.B.I., who is the Investigating Officer in these cases, has spoken about registering the case under Sections 5(2) r/w 5(1)(d) of the Act in Crime No.41 of 1989 on information. F.I.R. is marked as Ex.P.17 and the same was sent to Special Court, Coimbatore. He took up investigation in these cases and searched the house of A-1 and one Arjun. He has also stated that he has made recoveries of certain documents from the house of A-1. Thereafter P.W.8 examined the witnesses on 07.12.1989 and 08.12.1989 including P.W.5. After, completing investigation P.W.8 filed the charge sheet

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against A-1 and A-2 for the offence under Section 120 (B) r/w 420 I.P.C. and under Section 5(1) r/w 5(1)(d) of the Act.

5. The prosecution, in order to bring home the charges levelled against the accused in Crl.A.Nos.724, 771 and 774 of 1998, examined P.Ws.1 to 10 and filed Exs.P.1 to 43 and in Crl.A.Nos.725 and 823 of 1998, examined P.Ws.1 to 8 and filed Exs.P.1 to P.17.

6. When the accused were questioned under Section 313 of Cr.P.C. in respect of incriminating materials appearing against them through the evidence adduced by the prosecution, all the accused have come forward with the version of total denial and they have stated that they have not committed any offence and they have been falsely implicated in these cases. The accused also examined D.W.1, who is the Chief General Manager, State Bank of Trivancore, Ooty, in respect of all these appeals and in Crl.A.Nos.724, 771 and 774 of 1998, also marked Exs.D.1 to 4 viz., the Loan Scheme Book of State Bank of Travancore, the xerox copy of the extract for the ledger of State Bank of Travancore, xerox copy of the extract for the composite loan and copy of the decree in O.S.No.56 of 1989 of the District Court, Ooty.

7. Mr.V.Gopinath, learned Senior Counsel appearing for the appellants/A-1 to A-3 in Crl.A.Nos.724 and 771 of 1998, took me through the entire evidence available on record meticulously and made the following submissions :

(i) The allegation of A-3 and A-4, the loanees, giving false declaration for their eligibility to apply the loan under the "Self-employment to Educated Unemployed Youth Scheme" to the State Bank of Travancore, Ooty, is not supported by any witnesses examined by the prosecution. Exs.P.4 and P.20, the loan applications of A-3 and A-4, were submitted to DIC, Ooty, as per the procedure contemplated under the Scheme and after verification and scrutinization of the applications in respect of the eligibility the DIC forwarded the applications to the Bank as per the evidence of P.W.8. The evidence of P.W.2, Cashier of State Bank of Travancore, clearly shows that A-3 and A-4 have not given any false declaration and their applications satisfied the requirements for the grant of loan and therefore the prosecution has failed to prove the allegation of false declaration said to have been made by A-3 and A-4.

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(ii) The prosecution has also miserably failed to prove the charge of conspiracy against A-1 to A-4. P.W.10, Investigating Officer in this case, has stated in his cross-examination that there is no connection between A-3 and A-4 and both of them were hailing from different villages and they are not related to each other. It is also admitted by P.W.10 that there is no material available on record to show that A-3 and A-4 conspired to cheat the Bank.

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(iii) As per the charge, the conspiracy hatched by A-1 to A-4 to cheat the Bank during the period between February and March 1986. In order to prove this charge, the prosecution placed reliance on Exs.P.23 to P.25, letters, said to have been written by A-1 to Ramaiah, A-4's father, Ex.P.30, the letter said to have been written by A-3 to A-1, Ex.P.31, the letter addressed to A-1, Ex.P.32, the letter addressed to A-1 by A-2, Exs.P.33 to P.35, the letters said to have written to A-1 by A-4's father Ramaiah. But it is admitted by the Investigating Officer, P.W.10, that the above said letters were written subsequent to the period of conspiracy, as per the charge, viz., after May 1986 whereas the charge of conspiracy related to the period between February and March 1986.

(iv) As already submitted, there is no iota of evidence connecting A-3 and A-4 and only the transactions are similar in nature. Therefore, the joint trial of the accused A-1 to A-4 is illegal and there is not only misjoinder of charges but also misjoinder of persons amounting to manifest illegality.

(v) The learned Senior Counsel placed reliance on the following decisions in support of his above said contentions in respect of the allegation of conspiracy :

(1) SOLAIAPPA GOUNDER & OTHERS V. STATE OF TAMIL NADU reported in 2004-2-L.W.(Crl.) 929.
(2) RANGIAH CHETTY V. UNION OF INDIA reported in 1976 L.W. (Crl.) 32
(3) K.T.M.S.MOHD. V. UNION OF INDIA reported in 1992 SCC (Cri.) 572
(4) STATE OF GUJARAT V. MOHAMMED ATIK reported in 1998 SCC (Cri.) 936

(vi) It is also admitted by P.W.2 that A-2 being an Advocate having an account in the State Bank of Travancore, Ooty, and he used to come to the Bank frequently. Therefore, there is absolutely nothing wrong for A-1 to have friendship with A-2.

(vii) It is also pointed out by the learned Senior Counsel that there is no evidence to show that the amounts were paid to A-2 from the account of A-3 or A-4.

(viii) The learned Senior Counsel submitted that the loan availed by A-3 and A-4 is only under the scheme called "Self-Employment to Educated Unemployed Youth Scheme" and there is absolutely no penal provision made under the scheme in the event of default or in the event of diverting the loan amount to some other purpose and not carrying out the business as per their claim and there is only a specific provision made under this scheme to recover the entire amount from the loanees and admittedly in this case, the entire loan amount was repaid to the Bank by the loanees A-3 and A-4.

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(ix) Lastly, the learned Senior Counsel also submitted by placing reliance on the decision in M.NARAYANA V. STATE OF KERALA reported in AIR 1963 SC 1116 submitted that mere proof of abusing the official position is not sufficient and the prosecution is bound to prove the dishonest intention on the part of officers concerned. Therefore, the learned Senior Counsel contended that there is absolutely no iota of evidence adduced by the prosecution to prove the dishonest intention on the part of A-1.

8. Mr.R.Suresh, learned counsel appearing for A-4/appellant in Crl.A.No.774 of 1998, one of the loanees, while reiterating the submissions made by the learned Senior Counsel also submitted that the entire loan amount was repaid to the bank and therefore, there is absolutely no dishonest intention to cheat the bank on the part of A-4. It is further contended by the learned counsel that A-4 is the qualified person as he has passed S.S.L.C. and produced the relevant documents along with his application to P.W.8, the General Manager of DIC, Ooty, and the same was scrutinised properly by P.W.8, and only thereafter P.W.8 after satisfying that A-4 is competent and qualified to submit his application for the grant of loan under the scheme forwarded to the Bank viz., State Bank of Trivancore and only thereafter considering all the documents produced by A-4, Bank sanctioned loan to him.

9. Mr.S.R.Sundaram, learned counsel appearing for A-2/appellant in Crl.A.No.823 of 1998, the loanee, reiterated the arguments put forward by Mr.V.Gopinath, learned Senior Counsel and in addition to that submitted that the loan availed by A-2, loanee, has settled by A-2.

10. Per Contra, Mr.N.Chandrasekaran, learned Special Public Prosecutor, vehemently contended that the prosecution has proved its case by adducing clear, cogent and convincing evidence. It is contended by the learned Special Public Prosecutor that there are enough materials available on record to show that A-1 by abusing his official position obtained pecuniary advantage to A-3 and A-4 and therefore his conduct clearly comes within the purview of Section 5(1)(d) of the Act. It is also vehemently contended by the learned Special Public Prosecutor that under Section 5(1)(d) of the Act, it is not necessary to the prosecution to prove that A-1 in this case derived any pecuniary advantage for himself and on the other hand it is enough for the prosecution to prove that A-1 has obtained pecuniary advantage to others viz., A-2 to A-4. The learned Special Public Prosecutor on this point placed reliance on the decision of the Apex Court in M.NARAYANA V. STATE OF KERALA reported in AIR 1963 SC 1116. The contention of the learned Special Public Prosecutor proceeds and flows on the ground that A-3 and A-4, the loanees, by making dishonest and false declaration in connivance and conspiracy with A-1 availed loan under the Scheme called "Self-Employment to Educated Unemployed Youth Scheme" and it is also pointed out by the learned Special Public Prosecutor to strengthen his contention that both A-3 and A-4 have not utilized the sanctioned loan for the purpose for which it was granted viz., for running business in

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knitting and cloth shop. The learned Special Public Prosecutor placed strong reliance on Exs.P.23 to P.25, the exchange of letters between A-1 and A-4's father Ramaiah and Exs.P.30 to P.35, the letters written by A-3, A-2 and Ramaiah, father of A-4 to A-1 to prove the allegation of conspiracy between A-1 and other accused viz., A-2 to A-4.

11. I have given my careful and anxious consideration to the rival contentions put forward by either side.

12. As already stated the entire prosecution case revolving around the sanction of loan to A-3 and A-4 under the "Self-Employment to Educated Unemployed Youth Scheme" and the sum and substance of the prosecution case is that A-1 to A-4 conspired and A-3 and A-4 made false declaration about their eligibility for availing loan and after availing loan they have not utilized for the specific purpose for which it was sanctioned to them. The prosecution in order to prove its case examined P.Ws.2 to 5 and 7. P.Ws.2 to 4 were mainly examined to speak about the receipt of the applications and thereafter granting of loan to A-3 and A-4. P.W.4, as already stated, is the only witness examined for the purpose of highlighting the salient features of the said scheme under which the loans were granted to A-3 and A-4. It is also disclosed from the evidence available on record viz., P.Ws.2, 3 and 4 that A-3 and A-4 have submitted their applications, as per the procedure contemplated under the scheme, directly to the DIC by enclosing the required documents regarding the proof for their educational qualification and other documents to show that they are going to start a cloth business and for purchasing knitting machine. All these aspects have been made clear by the perusal of Ex.P.4, loan application of A-3 and Ex.P.20, loan application of A-4. It is also further made clear that according to P.W.8, the Chief Manager of the DIC, the applications submitted by A-3 and A-4 viz., Exs.P.4 and 20 were scrutinized and after satisfying that the requirements contemplated under the scheme have been complied with, forwarded those two applications to the State Bank of Travancore for sanctioning loan. It is also needless to say that if there is any false declaration or any irregularity or insufficient documents were produced by A-3 and A-4, P.W.8 could have very well returned the same and he could not have forwarded the same to the Bank viz., State Bank of Travancore. The evidence of P.W.8 makes it crystal clear that he has not whispered a word about any false declaration, infirmity or any irregularity in the applications viz., Exs.P.4 and 20 submitted by A-3 and A-4, loanees. It is also relevant to mention at this juncture that even P.W.2, the Cashier of the State Bank of Tranvancore has not whispered a word implicating A-3 and A-4 that they have given a false declaration in their applications viz., Exs.P.4 and P.20. Further, there is no iota of evidence adduced by the prosecution to prove the charge that A-3 and A-4 in connivance with A-1, Branch Manager of the Bank, have given false declaration for the purpose of obtaining loan under the above said scheme. Therefore, the prosecution has miserably failed to prove the charge against A-3 and A-4 and as a result the charge against A-1 also automatically falls into the ground.

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13. P.W.2 throughout in his chief examination narrated about the procedure contemplated under the scheme for granting loan to the unemployed youth. He has further stated in his evidence that the A-3 and A-4 have submitted the necessary documents for the grant of the loan viz., Ex.P.5, the affidavit of A-3, Exs.P.6 and P.7, S.S.L.C. Certificate first page copy and mark sheet respectively. It is also further admitted by P.W.2 in respect of both A-3 and A-4 that both of them have also submitted the quotation for the purpose of their project and business. It is further stated by P.W.2 about grant of loan of Rs.20,000/- to A-3 and Rs.25,000/- to A-4. It is seen from the evidence of P.W.2 that A-1 as the Manager of the Bank has relied upon the documents, apart from other aspects relating to the applications of A-3 and A-4 and granted loan to them. Even in respect of A-2, P.W.2 has simply stated that he was a practising Advocate at Ooty and he was having Savings Account in the Bank. It is further sated by P.W.2 that being the customer of the Bank A-2 used to visit the Bank frequently and therefore there was friendship between A-2 and A-1 and A-2 presented a cheque on 19.02.1986 for Rs.3,000/- and again another cheque for Rs.7,000/- and the cheques were presented with the Bank through some other person which have signed by A-2 on the back side and the respective amount of Rs.3,000/- and Rs.7,000/- were paid to that person and the cheques were marked as Exs.P.27 and 28. The fact remains that there is absolutely no incriminating materials available on record against A-2 nor any other materials available on record to connect A-2 with the other accused viz., A-1, A-3 and A-4 in respect of the transaction regarding sanctioning of loan under the said scheme. Therefore the charge against A-2 also fails.

14. In respect of the charge of conspiracy, the prosecution placed reliance on Exs.P.23 to P.25, letters said to have been written by A-1 to A-4's father Ramaiah. P.Ws.2 and 3 identified the handwriting of A-1 in Exs.P.23 to P.25. The learned Special Public Prosecutor also placed strong reliance on the letters, Exs.P.23 to 25, to prove the charge of conspiracy between A-1 and A-2 to A-4. The evidences adduced by the prosecution do not disclose that from whom the above said letters, Exs.P.23 to 25 were recovered. Even the Investigating Officer, P.W.10, is also silent as to how and from whom and on which date the recovery of Exs.P.23 to P.25 were made. But the perusal of Exs.P.23 to 25 shows that the letters were addressed by A-1 to one Ramaiah, father of A-4. Therefore, it has to be presumed that those letters were recovered only from the said Ramaiah, father of A-4. But for the reasons best known to the prosecution, it has not chosen to examine P.W.4 and I am of the view that such non-examination of the asid Ramaiah is fatal to the prosecution case. In view of the same, it is not safe to place reliance on the letters, Exs.P.23 to P.25. Apart from this infirmity, it is relevant to state at this juncture that the perusal of the so-called letters, Exs.P.23 to P.25, shows that there is absolutely no incriminating materials available on those letters neither against A-1 nor against the other accused viz., A-2 to A-4. In my considered view, the perusal of Exs.P.23 to P.24 discloses that A-1, being the Branch

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Manager of the Bank, has taken effective steps to recover the dues from loanees. As far as Ex.P.25 is concerned, there is absolutely nothing about any transaction and it is only a casual letter. It is needless to state that any bank official and more particularly a Branch Manager is under an obligation to canvass for deposits from the public as well as to collect the dues promptly from the customers and therefore there is nothing wrong for A-1, being the Branch Manager, to write letters to the customers. Further, the letters, Exs.P.23 to P.25, are dated 27.08.1987, 07.04.1988 and 25.05.1988. As per the charge, the period of conspiracy is between February and March 1986 and admittedly the above letters, Exs.P.23 to P.25 are subsequent to the period of conspiracy that too in the year 1987 and 1988 and therefore I am of the considered view that Exs.P.23 to 25 are not helpful to the prosecution to advance the case for substantiating the charge of conspiracy.

15. The learned Special Public Prosecutor also placed reliance on Ex.P.30 to P.35, letters written by A-2 and A-3 and Ramaiah, father of A-4, to A-1. It is pertinent to note that even these letters, Exs.P.30 to P.35, also subsequent to the period of conspiracy as per the charge, as the letters, Exs.P.30 to P.35, were written subsequent to the period of conspiracy ie. Ex.P.30 dated 03.12.1987, Ex.P.31 dated 19.12.1987, Ex.P.32 dated 16.03.1989, Ex.P.33 dated.Nil, Ex.P.34, dated Nil and Ex.P.35 dated 03.04.1988. The perusal of Exs.P.30 to P.35, also shows that there is no incriminating materials neither against A-1 nor against A-2 to A-4 in respect of the transaction involved in this case for availing loan under the said scheme. Mr.V.Gopinath, learned Senior Counsel, rightly placed reliance in respect of this position of law in the case of STATE OF GUJARAT V. MOHAN reported in 1998 SCC (CRI.) 936. In that decision, the Apex Court has held, following the principle laid down by its earlier judgment, as follows :

> "16. A three-Judge Bench of this Court has also said in Sardul Singh Caveeshar v. State of Bombay reported in AIR 1957 SC 747 :
>
> > "The principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. The rule in Section 10 Evidence Act, confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were 'in reference to their common intention' that is to say, 'things said, done or written, while the conspiracy was on foot' and 'in carrying out the conspiracy.' It would seem to follow that where the charge specified the period of conspiracy, evidence of acts of co-conspirators outside the period is not receivable in evidence."

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I am of the view that the preposition of law laid down by the Apex Court, as stated above, is squarely applicable to the facts of the instant case. Apart from the position of law even P.W.10, the Investigating Officer, also categorically admitted in his cross-examination that there is absolutely no evidence to show that A-3 and A-4 conspired in respect of obtaining loan from the Bank and stated that A-3 and A-4 are hailing from different villages and they are not related to each other. Therefore, I am of the considered view that the prosecution has miserably failed to establish the charge of conspiracy in this case.

16. The next important submission made by Mr.V.Gopinath, learned Senior Counsel, is that in the instant case there is not only misjoinder of charges but also misjoinder of persons and as a result there was not only mere irregularity but resulted in failure of justice. The learned Senior Counsel placed reliance on the materials available on record in respect of the charge of conspiracy, as stated above, and submitted that the transaction in respect of A-3 and A-4 are different though the loans were obtained under the same scheme namely, "Self-Employment to Educated Unemployed Youth Scheme". It is also rightly pointed out by the learned Senior Counsel that admittedly, as stated above, A-3 and A-4 are not related to each other and they are hailing from different villages and they have submitted their applications for availing loan separately through Exs.P.4 and P.20 and though both the transactions are similar in nature in respect of availing loan there are two different transactions in respect of each of them. Therefore, there is much force in the contention put forward by the learned Senior Counsel that the joint trial of all the accused A-1 to A-4 amounts to not only misjoinder of charges but also misjoinder of persons which definitely caused prejudice to the accused and resulted in failure of justice and as such the entire trial is vitiated as per the settled principles of law laid down by the Apex Court as well as by the High Court in the following decisions :
(i) In K.T.M.S.MOHD. V. UNION OF INDIA reported in 1992 SCC (Cri.) 572, the Hon'ble Supreme Court of India has held as follows :

> "Section 223 - Misjoinder of accused - Appellants 1 and 2 charged of conspiracy by reiterating their earlier statements before officers of Enforcement Department regarding receipt of money and by giving false statements before ITO reiterating their statements made before the Enforcement Officers but appellant 3 who claimed ownership of the money charged of conspiracy with appellants 1 and 2 to cause false entries in account books of a company and to wilfully make false statement before ITO - Courts below clubbing all the allegations against all the appellants together and considering the same as if all offences committed in the course of the same transaction of conspiracy - Putting appellant 3 in a joint trial with appellants 1 and 2 for conspiracy without any specific allegation or acceptable

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evidence to connect appellant 3 with the activities of appellants 1 and 2, held, amounted to misjoinder of charges which includes misjoinder of parties – This was not a mere irregularity but resulted in failure of justice in the facts and circumstances of the case."

(ii) In RANGIAH CHETTY V. UNION OF INDIA reported in 1976 L.W. (Crl.) 32, Ratnavel Pandian, J., as he then was, has held that,

"For a joint trial of several persons charged with different offences, the essential requirement is that all the offences should have been committed in the course of a single transaction. If the offences are not parts of the same transaction and the happening resolves itself into two or more separate ones, separate trials would be mandatory and not merely a matter of convenience; where such offence is a completed act in itself and the original design was accomplished so far as that act was concerned before the next offence was embarked upon, there is no community or continuity. In cases of same transaction, covered under Cl.(a) and (i) of S.239 of the old Code, the words "same transaction" comprises all the acts of all the persons concerned done in the course of carrying through the affair in question and the prima facie that is community and continuity of purpose. If the above test is not satisfied, then joint trial of the accused is tantamount to an illegal one, and therefore, the convictions made as a result of the joint trial have to be set aside and a re-trial ordered. If at all, two or more accused are to be tried together, it could be only by invoking the provisions under S.239 Cr.P.C. and finally held there is misjoinder of persons, which amounts to a manifest illegality, and prejudice has been caused to the accused by this joint trial, and the trial having thus been conducted in a manner prohibited by law, it has to be held to be altogether illegal"

Therefore, in view of the admitted facts and also in view of the settled principle of law laid down by the Apex Court as well as this Court, I am of the considered view that in the instant case also there is not only misjoinder of charges but also misjoinder of accused which amounts to manifest illegality and caused prejudice to the accused and as such the entire trial is vitiated.

17. Mr.N.Chandrasekaran, learned Special Public Prosecutor, has submitted that under Section 5 (1)(d) of the Act, it is not necessary to the prosecution to prove that A-1 in this case derived any pecuniary advantage for himself and on the other hand it is enough for the prosecution to prove that A-1 has obtained pecuniary advantage to other accused viz., A-2 to A-4. The learned Special Public Prosecutor submitted that by making false representation with the connivance with

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A-1 as the Branch Manager of the Bank, A-3 and A-4 have availed the sanctioning of loan under the said Scheme. The fact remains, as already pointed out by me in the earlier portion of this judgment, that the prosecution has miserably failed to prove the allegation that A-3 and A-4 have made false declaration in connivance with A-1 regarding their eligibility for obtaining loan. Therefore, the only remaining case of the prosecution is that A-3 to A-4 having availed the loan for the specific purpose of purchasing knitting machine and for running business in cloth but they have misused the same for some other purpose. The learned Special Public Prosecutor vehemently contended that sanctioning of loan to A-3 and A-4 by A-1, knowing fully well that they are not going to use the loan for the purpose for which it was granted, has obtained pecuniary advantage to A-3 and A-4 and therefore the conduct of A-1 squarely comes within the purview of Section 5(1)(d) of the Act. The learned Special Public Prosecutor also placed reliance on the decision of the Hon'ble Supreme Court in M.NARAYANA V. STATE OF KERALA reported in AIR 1963 SC 1116.

18. Mr.V.Gopinath, learned Senior Counsel also strongly placed reliance on the very same decision of the Apex Court and submitted that there is no dishonest intention of the part of A-1 to commit any offence and placed reliance on the following finding of the Apex Court in the decision cited supra :

> "The gist of the offence under this clause is, that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. "Abuse" means mis-use i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word 'otherwise' has wide connotation and if no limitation is place on it, the words 'corrupt', 'illegal', and 'otherwise' mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word 'otherwise' with the words 'corrupt or illegal means', and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause"

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19. I find much force in the contention put forward by the learned Senior Counsel for the appellants. The preposition of law laid down by the Apex Court in the above said decision that the prosecution is bound to prove that there is dishonest intention on the part of A-1 to bring him within the meaning of Section 5(1)(d) of the Act. However, in the instant case, as already stated by me in the earlier portion of the judgment, the prosecution has not only miserably failed to prove the allegation of dishonest and false declaration said to have been made by A-3 and A-4 but also admittedly the prosecution has not proved that A-1 has obtained any pecuniary advantage. On the other hand it is submitted by the learned Special Public Prosecutor that it is enough for the prosecution to prove that A-1 has obtained pecuniary advantage to other accused viz., A-2 to A-4. As already pointed out by me that there is absolutely no incriminating materials available on record to connect A-2. As far as A-3 and A-4 are concerned, they are the loanees and they have applied for loan under the above said scheme. It is needless to say that they have satisfied their eligibility and only after verifying and scrutinising their application, as per the procedure contemplated under the scheme, P.W.8, the General Manager of DIC, forwarded their applications Exs.P.4 and P.20 to the Bank for the sanction of the loan. I am of the considered view that A-1 sanctioning of loan under the above said scheme to A-3 and A-4 under no stretch of imagination could be construed to be a pecuniary advantage as contemplated under the Act. It has to be construed as a loan sanctioned by any Bank on the basis of the application submitted by the concerned persons. Merely because the loans were not used for the specific purpose for which it was sanctioned, it cannot be stated that they have derived any pecuniary advantage from the Bank attracting the provision under Section 5(1)(d) of the Act. It is also relevant to note even as per the admitted case of the prosecution that there is an in-built provision made under the scheme itself to the effect that in the event of failure of the loanees to use the sanctioned loan for the specific purpose for which it was granted, the loanees have to repay the entire loan amount and there is absolutely no penal provision provided under the scheme. It is also important to note that A-3 and A-4 availed the loan under the special scheme viz., "Self-Employment to Educated Unemployed Youth Scheme" and the scheme provides certain terms and conditions and also a default clause provided under the Scheme.

20. One more important aspect to be borne in mind in respect of this transaction is that there is absolutely no iota of evidence adduced by the prosecution to the effect that A-1 was well aware even before sanctioning of loan that A-3 and A-4 are not going to use the same for the specific purpose for which it was granted to them. It is also fairly admitted by P.W.4, the Field Officer of the Bank, that A-3, has already settled the loan amount to the Bank. D.W.1 who was the Chief Manager of the bank also categorically stated that A-3 has repaid the entire loan amount and the account of A-3 is marked Ex.D.2. As far as A-4 is concerned, he has also settled the entire amount as per the decree obtained by the Bank in O.S.No.56 of 1989 which is marked as Ex.D.4 through D.W.1.

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21. Mr.V.Gopinath, learned Senior Counsel as well as Mr.N.Chandrasekaran, learned Special Public Prosecutor, while making submissions in respect of the earlier appeals covered all the points involved in Crl.A.Nos.725 and 823 of 1998 also as all these appeals arising out of same transaction for obtaining loan under the "Self-Employment to Educated Unemployed Youth Scheme". The defence is also similar and even the witnesses were also mostly same except the loanee in this case is a different person. The finding given by me in respect of earlier appeals squarely applicable to the facts of this appeal also, apart from the findings in respect of main points involved in all these appeals. As far as these appeals are concerned, there are some more materials available on record in favour of the defence theory. P.W.1, the witness who has accorded sanction to the loan, categorically admitted in his cross-examination that in the event of not utilising the loan for the purpose for which it was granted, the entire loan amount should be returned to the bank. In this case also there is absolutely no evidence adduced by the prosecution to the effect that A-2, loanee, has given any false declaration for the purpose of obtaining loan under the above said scheme. P.W.2 categorically admitted that the perusal of the documents viz., Ex.P.4, the application for loan submitted by A-2 and other documents not at all discloses any irregularities. There is not an iota of evidence to prove that A-2 has given any false declaration. It is needless to state that only after scrutinising and satisfying that the application submitted by A-2 is valid and fulfilled all the conditions, P.W.4, General Manager of DIC, forwarded the same for the sanctioning of loan, to the Bank.

22. As stated in the earlier appeals, the defence also examined D.W.1, the Chief Manager, State Bank of Travancore, and he has categorically stated that the sanctioned loan amount for the purpose of purchasing any machinery has to be directly sent to the supplier of the machine. Therefore, there is absolutely nothing wrong in P.W.5, who has given the quotation for the purchase of coffee grinding machine, receiving the sanctioned cheque from A-2.

23. It is also relevant to state that the prosecution miserably failed even in this case to establish the charge of conspiracy. Apart from that P.W.8, the Investigating Officer, in this case, has categorically admitted in his cross-examination that there is no evidence in this case to show that A-2 has given any false declaration to the Bank for obtaining of loan. It is also specifically admitted by the Investigating Officer, P.W.8, that A-1 sanctioned the loan, as per the procedures and rules contemplated. It is further admitted by P.W.8 that the sanctioned loan for A-2 was given only to the supplier of the machine and it is wrongly noted in the charge sheet that A-1 gave that amount directly to A-2.

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24. Therefore, for the aforesaid reasons all these five appeals are allowed and the conviction and sentence imposed on the appellants/accused have been set aside. Bail bond executed, if any, shall stand cancelled. The fine amount paid, if any, shall ordered to be refunded to them.

gg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1)The III Additional Sessions Judge cum Special Judge
for C.B.I. Cases, Coimbatore.

2. Do Thro The Principal Sessions Judge, Coimbatore.

3. The Superintendent of Police,
Central Bureau of Investigation, Madras.

4. Mr. N. Chandrasekaran,
The Special Public Prosecutor for C.B.I.Cases,
High Court, Madras.

5. The Inspector of Special Police Establishment,
Central Bureau of Investigation,
Anti Corruption Bureaue, Chennai.

+ 1 cc to Mr. S.R Sundaram, Advocate SR No. 21992

+ 1 cc to Mr. R. Sivakumar, Advocate SR No.21837

+ 6 ccs to Mr. L. Mahendran, Advocate SR No.22008, 22007

+ 2 ccs to Mr. N. Chandrasekaran, Spl PP for CBI Cases SR No.33045 22044

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